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## 9 UNITED STATES BANKRUPTCY COURT

## 10 EASTERN DISTRICT OF CALIFORNIA

## 11 FRESNO DIVISION

12 In re: ) Case No. 11-11051-B-7  
 13 WILLIAM MATTHEW FERRALES, ) Chapter 7

14 )  
 15 Debtor. )  
 16 )  
 17 AUGUST B. LANDIS, )  
 18 Acting United States Trustee, )  
 19 Plaintiff, )  
 20 )  
 21 WILLIAM MATTHEW FERRALES, )  
 22 Defendant. )  
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 28 )

A.P. No. 11-01044-B

Date: April 12, 2011  
 Time: 10:00 a.m.  
 Place: U.S. Bankruptcy Court  
 Department B, Courtroom 12  
 2500 Tulare Street  
 Fresno, California  
 Judge: W. Richard Lee

23 **FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING  
 24 DEFAULT JUDGMENT ON COMPLAINT TO (1) DISMISS CHAPTER 7 CASE  
 25 WITH PREJUDICE AND (2) ENJOIN DEBTOR FROM FILING BANKRUPTCY  
 FOR TWO YEARS**

26 TO THE HONORABLE W. RICHARD LEE, UNITED STATES BANKRUPTCY JUDGE:

27 On April 12, 2011, the initial status conference was heard on the United States  
 28 Trustee's Complaint To (1) Dismiss Chapter 7 Case With Prejudice And (2) Enjoin Debtor

1 From Filing Bankruptcy For Two Years. Gregory S. Powell appeared for the United States  
2 Trustee. Defendant, William Matthew Ferrales, did not appear. No answer or responsive  
3 pleadings have been filed. Having reviewed the pleadings, the Court sua sponte ordered  
4 default judgment, and now issues the following findings of fact and conclusions of law.

5 **Findings of Fact**

6 1. This proceeding relates to *In re William Matthew Ferrales*, Case No. 11-11051-B-  
7 7, a chapter 7 case filed on January 31, 2011, in the United States Bankruptcy Court for the  
8 Eastern District of California, Fresno Division (the “Fresno Division”). The Defendant  
9 represented himself *pro se*.

10 2. The Defendant filed three chapter 7 bankruptcies in less than five months.

11 3. The first case was filed on September 29, 2010. William Matthew Ferrales aka Bill  
12 Ferrales filed a *pro se* chapter 7 bankruptcy, case number 10-61214-B-7, in the Fresno  
13 Division. The voluntary petition was handwritten and none of the required schedules or  
14 statements were filed. The Court issued a Notice of Incomplete Filing and Notice of Intent to  
15 Dismiss Case if Documents were Not Timely Filed (“NOID”). The court filing fee was paid in  
16 full. On October 18, 2010, the Court issued an Order Dismissing Case for Failure to Timely  
17 File Documents.

18 4. The second case was filed on November 29, 2010. William Matthew Ferrales aka  
19 Bill Ferrales filed a *pro se* Chapter 7 bankruptcy, case number 10-63668-A-7F, in the Fresno  
20 Division. Again, the voluntary petition was handwritten and none of the required schedules or  
21 statements were filed. The defendant did not disclose filing a previous bankruptcy case on his  
22 Voluntary Petition. The court filing fee was paid in full. The Court issued a NOID, and on  
23 December 17, 2010, the Court issued an Order Dismissing Case for Failure to Timely File  
24 Documents.

25 5. The third case was filed on January 31, 2011. William Matthew Ferrales filed a *pro*  
26 *se* Chapter 7 bankruptcy, case number 11-11051-B-7F, in the Fresno Division. The voluntary

1 petition was handwritten and none of the required schedules or statements were filed. The  
 2 court filing fee was paid in full. The defendant did not disclose filing two previous bankruptcy  
 3 cases on his Voluntary Petition. The Court issued a NOID, and on February 18, 2010, the  
 4 Court issued an Order Dismissing Case for Failure to Timely File Documents.

5 6. On February 11, 2011, an order was entered in this case retaining jurisdiction over  
 6 any action by the United States Trustee relating to 11 U.S.C. § 707(b)(3)(A).

7 **Conclusions of Law**

8 7. The United States Trustee is responsible for supervising the administration of cases  
 9 under chapter 7 of the Bankruptcy Code and has standing to file this Motion. 28 U.S.C.  
 10 §586(a)(3)(A); 11 U.S.C. §307.

12 8. Under 11 U.S.C. § 707(b)(1), the court may dismiss a case if the court finds that a  
 13 debtor has filed a petition in bad faith pursuant to 11 U.S.C. § 707(b)(3)(A). Section  
 14 707(b)(3)(A) provides that:

15 In considering under paragraph (1) whether the granting of relief  
 16 would be an abuse of the provision of this chapter in a case in  
 17 which the presumption in subparagraph (A)(I) of such paragraph  
 18 does not arise or is rebutted, the court shall consider –

19 (A) whether the debtor filed the petition in bad faith; ...

20 9. “[G]ood faith requires a showing of an honest intention.” *In re Marks*, 174 B.R. 37,  
 21 40 (Bankr. E.D. Pa. 1994)(citations omitted). The bad faith must be such that it so taints the  
 22 filing for chapter 7 relief that the debtor is deemed unworthy of receiving any part of that relief.  
 23 *In re Khan*, 172 B.R. 613, 620 (Bankr. D. Minn. 1993)(citations omitted).

24 10. In *In re Mitchell*, the court held that the standards for bad faith dismissal used in  
 25 Chapter 11 and Chapter 13 cases should be used in determining whether the debtor has acted in  
 26 bad faith in chapter 7, to the extent possible. *In re Mitchell*, 357 B.R. 142, 153-54 (Bankr. C.D.  
 27 Cal. 2006). By borrowing from the Ninth Circuit’s “substantial abuse” test and from the bad  
 28 faith criteria applicable in Chapter 11 and Chapter 13 cases, the court in *Mitchell* set out a non-

1 exclusive list of factors to be considered in determining whether a chapter 7 case should be  
 2 dismissed pursuant to 11 U.S.C. § 707(b)(3), including “whether the debtor has a history of  
 3 bankruptcy petition filings and case dismissals”. *Mitchell*, at 153 - 155; *see also In re Price*,  
 4 353 F.3d 1135, 1139-1140 (9<sup>th</sup> Cir. 2004), *In re Leavitt*, 171 F.3d 1219, 1224 (9<sup>th</sup> Cir. 1999),  
 5 and *In re Marshall*, 298 B.R. 670, 681 (Bankr. C.D. Cal. 2003).

6       11. In addition to the factors cited by the *Mitchell* court, the court in *In re Leavitt*  
 7 indicated that, whether the debtor misrepresented facts in his petition or plan, unfairly  
 8 manipulated the Bankruptcy Code, or otherwise filed the petition in an inequitable manner,  
 9 should also be considered. *In re Leavitt*, 171 F.3d 1219 at 1224.

10      12. Neither malice nor fraudulent intent by the debtor is required for a finding of bad  
 11 faith. *In re Mitchell*, 357 B.R. at 155.

12      13. The defendant’s serial skeletal filings coupled with dismissals and his failure to  
 13 file the documents required under Federal Rules of Bankruptcy Procedure 1007 in every case,  
 14 constitute bad faith and warrant dismissal of this case with prejudice.

15      14. 11 U.S.C. § 109(g) provides in pertinent part:

16       No individual may be a debtor who was a debtor in a case pending 180 days prior to the  
 17 filing of the instant case if (1) the case was dismissed by the court for willful failure of  
 18 the debtor to abide by orders of the court, or to appear before the court in proper  
 19 prosecution of the case...

20      11 U.S.C. §109(g)(1).

21      15. The defendant’s willful filing of three chapter 7 bankruptcy cases within a five  
 22 month period and his willful failure to file required bankruptcy documents in every case not  
 23 only constitutes grounds for dismissal 11 U.S.C. § 707(b)(3)(A), but also constitutes “willful  
 24 failure to appear” before the Court in proper prosecution of the case within the meaning of 11  
 25 U.S.C. §109(g). *In re Huerta*, 137 B.R. 356, 375 (Bankr. C.D. Cal. 1992) quoting *In re King*,  
 26 126 B.R. 777, 780-81 (Bankr. N.D. Ill. 1991).

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1       16. The case of a debtor who frequently files bankruptcy petitions may also be  
2 dismissed with a bar on future filings. *See e.g., In re Armwood*, 175 B.R. 779 (Bankr. N.D. Ga.  
3 1994) (Debtor's fifth chapter 13 petition dismissed with prejudice with 180 day bar on filing);  
4 *In re Gros*, 173 B.R. 774 (Bankr. M.D. Fla. 1994) (Debtor's fifth bankruptcy filing in 25  
5 months dismissed with prejudice with bar on future filing without leave of court); *In re  
6 Standfield*, 152 B.R. 528, (Bankr. N.D. Ill. 1993) (One of Debtor's two simultaneously pending  
7 cases dismissed with prejudice with 180 day bar on filing); *In re Stathatos*, 163 B.R. 83 (N.D.  
8 Tex. 1993) (Debtor's fourth bankruptcy case dismissed with prejudice with two year bar on  
9 filing); *In re Earl*, 140 B.R. 728 (Bankr. N.D. Ind. 1992) (Debtor's fourth chapter 13 case  
10 dismissed with 180 day bar on future filing under §105); *In re Jolly*, 143 B.R. 383 (E.D. Va.  
11 1992), aff'd 45 F.3d 426 (4<sup>th</sup> Cir. 1994) (Debtor's seventh bankruptcy case dismissed with  
12 prejudice with 180 day bar on filing); *In re Bradley*, 38 B.R. 425 (Bankr. C.D. Cal. 1984)  
13 (Debtor's fourth bankruptcy filing in one year dismissed with prejudice and six month bar on  
14 filing).  
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16       17. The defendant in this case filed three skeletal bankruptcy petitions in less than five  
17 months. Defendant's pattern of filings followed by dismissal strongly indicates he does not  
18 have the ability or intent to seek a discharge under chapter 7, and shows that bankruptcy is  
19 being used for the sole purpose of delaying creditors. His behavior demonstrates bad faith and  
20 an intent to abuse the system.  
21

### Conclusion

22       For the foregoing reasons, the Court concludes the following relief should be granted:  
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24       1. This case will be dismissed with prejudice; and  
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1           2. The defendant, William Matthew Ferrales, shall be barred from filing another  
2           bankruptcy petition within two years from the date of the dismissal.  
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4           A separate order shall be entered.  
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12           **Dated:** April 29, 2011  
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\_\_\_\_\_  
W. Richard Lee  
United States Bankruptcy Judge

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